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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Sens. Kunze and Gavarone

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### SUMMARY

- Changes to the definition of the criminal offense of “hazing.”
- Changes the *mens rea* (or the offender’s mental state) for the offense of “hazing” to *knowing*, rather than *reckless* as under current law.
- Makes the offense of “hazing” a first degree misdemeanor, or a fifth degree felony if the hazing causes physical harm to the victim, rather than a fourth degree misdemeanor as under current law.
- Establishes the offense of “aggravated hazing,” as a second degree felony, the elements of which include (1) causing physical harm, substantial risk of physical harm, or death to the victim (2) acting with reckless indifference to the health and safety of the victim and (3) causing, coercing, or forcing the consumption of alcohol or a drug of abuse.
- Establishes the offense of “supporting hazing,” a first degree misdemeanor, if the hazing causes physical harm, and a third degree felony, if it causes serious physical harm.
- Establishes the offense of “failure to report hazing,” a fourth degree misdemeanor, or a first degree misdemeanor if the hazing causes physical harm.
- Prohibits specific members of an institution or organization from failing to report hazing, a violation of which is a fourth degree misdemeanor.
- Requires the Chancellor of Higher Education to adopt a statewide educational plan for preventing hazing at institutions of higher education that includes both a model anti-hazing policy and guidelines for anti-hazing education and training.
- Requires each public and private institution of higher education to adopt an anti-hazing policy, to report hazing incidents, and to provide student and faculty educational training.

- Entitles the bill “Collin’s Law: The Ohio Anti-Hazing Act.”

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## DETAILED ANALYSIS

### Criminal offense of “hazing”

The bill substantially revises the definition of the criminal offense of “hazing.” First, it adds “causing, forcing, [or] soliciting” to “any act or coercing another, including the victim” (as under current law) to the prohibited acts. Second it replaces the act of initiation into any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person with more specific criteria. This includes any act causing, forcing, soliciting or coercing another, including the victim, to do one or more of three specific acts for the purposes of initiating, admitting, or affiliating an individual or with an organization, continuing or enhancing an individual’s membership or status in an organization, or perpetuating or furthering a traditional or ritual of an organization.

Those acts include any of the following:

1. Violating federal or state criminal law;
2. Consuming any food, liquid, alcohol or drug of abuse or other substance which subjects the victim to a substantial risk of emotional or physical harm; or
3. Causing substantial risk of emotional harm to another.

The bill excludes reasonable and customary organizational training, contests, competitions, or events and lawful protected speech from the definition of hazing.<sup>1</sup>

### Application to public and private institution of higher education

All of the following entities are institutions of higher education subject to the bill’s provisions, prohibitions, and penalties: (1) state institutions of higher education, (2) nonprofit colleges and universities, and (3) all for profit institutions registered with the State Board of Career Colleges and Schools with authorization for an associate or bachelor’s degree program, and (4) certain private career colleges that are exempt from regulation by the State Board of Career Colleges and Schools.<sup>2</sup>

### Application to organizations

For purposes of determining which entities and individuals are subject to the bill’s provisions, an “organization” includes:

1. A fraternity, sorority, association, corporation, order, society, corps, athletic team, band, orchestra, or chorus, a service or social club, or a group of people sharing common interests and related together socially, competitively, or with a shared purpose; and

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<sup>1</sup> R.C. 2903.31(A)(3).

<sup>2</sup> R.C. 2903.311(A)(2).

2. A national or international organization with which a fraternity, sorority, or other organization is affiliated.

## Penalties for “hazing” and related offenses

### “Hazing”

The bill modifies the *mens rea* (or the offender’s mental state) for the criminal offense of “hazing” by replacing *reckless* participation (as under current law) with *knowing* participation. It also adds to the list of actions that constitute hazing knowingly committing, soliciting another person to commit, or being actively involved in the planning of the hazing of another. Under the bill “hazing” is a first degree misdemeanor. However, if the violation causes physical harm to the victim it is a fifth degree felony. Under current law, “hazing,” is a fourth degree misdemeanor for any act of hazing.<sup>3</sup>

### “Aggravated hazing”

The bill establishes the offense of “aggravated hazing” when the hazing causes physical harm, substantial risk of physical harm, or death to the victim of hazing, provided the offender (1) acted with reckless indifference to the health and safety of the victim and (2) caused, coerced, or forced the consumption of an alcohol or a drug of abuse. “Aggravated hazing” is a second degree felony under the bill.<sup>4</sup>

### “Supporting hazing”

Under the bill, an individual who commits or who witnesses criminal hazing that causes physical harm and who *knowingly* fails to immediately report that hazing to law enforcement or emergency services is guilty of “supporting hazing.” The offense is a first degree misdemeanor. However, if the violation causes *serious* physical harm to the victim, the offense is a third degree felony.<sup>5</sup>

### “Failure to report hazing”

The bill establishes the offense of “failure to report hazing.” Any member of an organization (see above) who is aware of a hazing incident and *knowingly* fails to report it is guilty of “failure to report hazing.” Under the bill, “failure to report hazing” is a fourth degree misdemeanor, except that if the hazing incident causes physical harm to the victim, the offense is a first degree misdemeanor.<sup>6</sup>

A separate provision of the bill prohibits specific members of an institution or organization from failing to report hazing. It applies to any volunteer, administrator, employee, or faculty member of an institution of higher education or any volunteer or official or an

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<sup>3</sup> R.C. 2903.31(B), (C), and (D).

<sup>4</sup> R.C. 2903.31(E).

<sup>5</sup> R.C. 3302.31(F).

<sup>6</sup> R.C. 2903.31(G).

organization, acting in an official or professional capacity, who *knows* that a person has suffered, or faces a threat or substantial risk of, hazing and who *knowingly* fails to *immediately* report that knowledge to the appropriate law enforcement agency. A violation of that prohibition is a fourth degree misdemeanor.<sup>7</sup>

## Table of hazing offenses

The following table summarizes the bill's hazing offense and penalty provisions.

Offense	Actor	Elements	Penalty
Hazing	Any person	Knowing participation, commission, or active involvement in hazing	1st degree misdemeanor
Hazing (increased penalty)	Any person	Hazing that causes physical harm	5 <sup>th</sup> degree felony
Aggravated hazing	Any person	<ol style="list-style-type: none"> <li>1. Criminal hazing;</li> <li>2. Reckless indifference to the health and safety of the victim or caused, coerced, or forced the consumption of alcohol or drugs;</li> <li>3. Causes serious physical harm, substantial risk of serious physical harm, or death.</li> </ol>	2 <sup>nd</sup> degree felony
Supporting hazing	Any individual	<ol style="list-style-type: none"> <li>1. Criminal hazing or witnessing criminal hazing;</li> <li>2. Knowing failure to immediately report;</li> <li>3. Causes physical harm.</li> </ol>	1 <sup>st</sup> degree misdemeanor
Supporting hazing (increased offense)	Any individual	Supporting hazing that causes serious physical harm	3 <sup>rd</sup> degree felony
Failure to report hazing	A member of an organization	<ol style="list-style-type: none"> <li>1. Awareness of criminal hazing;</li> <li>2. Knowing failure to report.</li> </ol>	4 <sup>th</sup> degree misdemeanor

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<sup>7</sup> R.C. 2903.311.

Offense	Actor	Elements	Penalty
Failure to report hazing (increased offense)	A member of an organization	<ol style="list-style-type: none"> <li>1. Awareness of criminal hazing;</li> <li>2. Knowing failure to report;</li> <li>3. Causes physical harm.</li> </ol>	1 <sup>st</sup> degree misdemeanor
Failure to report hazing (by an official)	<ol style="list-style-type: none"> <li>1. A volunteer, admin., employee, or faculty member of an institution of higher education;</li> <li>2. A volunteer or official of an organization.</li> </ol>	<ol style="list-style-type: none"> <li>1. Acting in an official or professional capacity;</li> <li>2. Knows that a person has suffered or faces a threat of hazing;</li> <li>3. Knowing failure to immediately report.</li> </ol>	4 <sup>th</sup> degree misdemeanor

## Statewide hazing prevention plan

Under the bill, the Chancellor of Higher Education must develop a statewide educational plan for preventing hazing at institutions of higher education. It must include (1) a model anti-hazing policy and (2) guidelines regarding anti-hazing education and training. The model policy must prohibit students and other individuals associated with an organization from engaging in any of the hazing offenses and must include provisions that mirror the requirements for institutional anti-hazing policies as described below.<sup>8</sup> The Chancellor's guidelines must provide anti-hazing education and training for (1) students, (2) administrators, faculty, and individuals employed by an institution, and (3) organizations recognized by, or operating under the sanction of, an institution.<sup>9</sup>

## Institutional anti-hazing requirements

### Anti-hazing policy

The bill requires each institution of higher education to develop an anti-hazing policy that includes rules prohibiting hazing, a method to enforce the policy, and appropriate penalties for violations. The policy's penalties, if imposed, are in addition to criminal penalties and may include the imposition of fines, withholding of diplomas or transcripts, the revocation of permission to operate an organization on campus, or probation, suspension, dismissal, or expulsion. Each policy applies to any act of hazing or violation of the bill's criminal provisions on

<sup>8</sup> R.C. 3333.0417(B)(1) and 3345.19(B).

<sup>9</sup> R.C. 3333.0417(B)(2).

or off-campus that takes place between two or more people who are affiliated with the institution.

Each institution must post the policy on the institution's publicly accessible website and provide copies to all organizations within the institution.<sup>10</sup>

### **Reports of hazing violations**

Beginning with the 2022-2023 academic year, each institution must maintain and post a report of hazing violations and the institution's policy. Each report must include the name of the offender, the date the offender was charged with a violation and the date of resolution, a general description of the violation, investigation and findings, and penalties imposed. The initial report must include all hazing violations reported to the institution for the five previous consecutive years, to the extent the institution has retained that information. An institution must post its first report by January 15, 2023, and must update and re-post it on January 1 and August 1 of each year.<sup>11</sup>

Note, while the bill requires an institution to include the names of offenders on these reports, it also prohibits institutions from including personal identifying information, consistent with the federal Family Educational Rights and Privacy Act.<sup>12</sup>

### **Student anti-hazing education**

The bill requires each institution to provide students with an online or in-person educational program on hazing, hazing awareness, prevention, intervention, and the anti-hazing policy that complies with the Chancellor's guidelines. Each institution must (1) offer an opportunity for students to complete the program during new student orientation, (2) certify each student's attendance, and (3) prohibit a student who does not attend the program from participating in any institutional organization. Likewise, each organization within an institution is prohibited from accepting or initiating a student who has not completed the program.<sup>13</sup>

### **Staff and volunteer training**

Under the bill, each institution must provide mandatory training on hazing to all staff and volunteers that advise or coach an organization and who have direct contact with students. The training must include information on hazing awareness, hazing prevention, and the institution's anti-hazing policy. Each institution must also adopt rules requiring organizations to

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<sup>10</sup> R.C. 3345.19(B) and (C).

<sup>11</sup> R.C. 3345.19(D).

<sup>12</sup> R.C. 3345.19(D)(4). See also 20 United States Code 1232g and 34 Code of Federal Regulations 99.1 *et seq.*

<sup>13</sup> R.C. 3345.19(E)(1) and (4).

conduct mandatory anti-hazing training that complies with the Chancellor's guidelines for any volunteers who have contact with students.<sup>14</sup>

### **No private right of action**

The bill provides that nothing contained in its provisions may be construed to create a private right of action against any individual or institution of higher education.<sup>15</sup>

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## **HISTORY**

<b>Action</b>	<b>Date</b>
Introduced	03-10-21

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S0126-I-134

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<sup>14</sup> R.C. 3345.19(E)(2), (3), and (4).

<sup>15</sup> R.C. 3345.19(F) and Section 4.